

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

PATRICK T. BURKE

Plaintiff,

-v.-

Civil Action No.  
9:01-cv-1396 (GLS/DRH)

CAPTAIN SEITZ, Correctional Officer Captain  
in Charge of Movement and Control; DOCTOR  
BUTTARAZZI, Facility Doctor; CYNTHIA  
ERVOLINA, Inmate Records; and JOSEPH  
MCCOY, Superintendent, Cayuga Correctional  
Facility

Defendant.

---

APPEARANCES:

OF COUNSEL:

**FOR THE PLAINTIFF:**

PATRICK T. BURKE  
Plaintiff Pro Se  
The Rescue Mission  
155 Gifford Street  
Syracuse, New York 13202

**FOR THE DEFENDANTS:**

HON. ELIOT SPITZER  
Attorney General for the  
State of New York  
The Capitol  
Albany, New York 12224-0341

JAIME IRENE ROTH, ESQ.  
Assistant Attorney General

GARY L. SHARPE,  
U.S. DISTRICT JUDGE

**ORDER**

The above-captioned matter comes to this court following a Report-Recommendation by Magistrate Judge David R. Homer, duly filed January 24, 2006. Following ten days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed, and the court having reviewed the Magistrate Judge's Report-Recommendation for clear error, it is hereby

ORDERED, that the Report-Recommendation of Magistrate Judge David R. Homer filed January 24, 2006 is ACCEPTED in its entirety for the reasons state therein, and it is further

ORDERED, that defendants' motion for summary judgment (Docket No. 51) be GRANTED as to all claims and all defendants, and it is further

ORDERED, that the Clerk of the Court is to enter judgment in favor of Defendants and close this case.

IT IS SO ORDERED

Dated: February 13, 2006  
Albany, New York

  
\_\_\_\_\_  
Gary L. Sharpe  
U.S. District Judge